

DELIBERATIVE

DRAFT

U.S. ENVIRONMENTAL PROTECTION AGENCY  
Washington D.C.

**PORTLAND HARBOR UPDATE**

DATE: March 10, 2016

LOCATION: Telephone

MEETING TIME: 4:00 – 5:00 pm EST

I. REQUESTING OFFICE: EPA Region 10, OLEM

II. TIMELINE

- **November 18-19, 2015:** EPA's National Remedy Review Board and Contaminated Sediments Technical Advisory Group (NRRB/CSTAG) Meeting
- **December 31, 2015:** NRRB/CSTAG Issues Recommendations
- **January 21, 2016:** Region Responds to NRRB/CSTAG Recommendations
- **January and February 2016:** Five Government to Government Tribal Consultations (the sixth Tribe had to postpone, now scheduled for March 22, 2016)
- **February 8, 2016:** Completed Final Remedial Investigation (RI) Report
- **February and March 2016:** Extensive public outreach
- **April 2016:** Issue Feasibility Study (FS) and Proposed Plan (PP). LWG has 14 days from issuance of PP to dispute the FS.
- **April – June 2016:** 60-Day Public Comment Period, including a second round of tribal consultations
- **December 31, 2016:** Issue Record of Decision (ROD), including Responsiveness Summary

III. PURPOSE

**Update the Administrator on the status of remedy selection and the preferred alternative and identify any concerns early so there is time to address them prior to publication of the PP.**

Unlike other Superfund sites, the EPA Administrator will sign the Portland Harbor Record of Decision. The focus of the briefing is to update the Administrator on the status of remedy selection, review the preferred alternative we plan to propose in the PP, and update the Administrator on feedback received from EPA's NRRB and CSTAG (the Boards) and various parties, including Tribes, businesses, local and national elected officials, the public, and the State.

#### IV. BACKGROUND AND HISTORY

- The Portland Harbor Site was listed on the National Priorities List in December 2000. There are high levels of PCBs, dioxins/furans, PAHs, pesticides and other contaminants that present risk to human health and the environment that will require cleanup in the Willamette River.
- Contaminant levels and environmental conditions vary throughout the site. There are several areas that are significantly contaminated and will need active cleanup, including dredging and capping. Enhanced natural recovery/in-situ treatment and monitored natural recovery may be the appropriate action in other areas.
- In 2001, ten potentially responsible parties signed an AOC to conduct the Remedial Investigation/Feasibility Study (RI/FS). The ten parties are referred to as The Lower Willamette Group (LWG).
- After an extensive PRP search, EPA has identified more than 150 PRPs.
- At the direction of EPA, the LWG completed the final RI Report on February 8, 2016.
- The FS will be completed by EPA and issued at the same time as the PP, expected to be issued in April 2016.

#### V. KEY ISSUES

**Current Status: The EPA made a determination that it would be more efficient to complete the FS rather than direct the LWG to do so. The FS will be issued at the same time as the PP.**

- EPA is considering all past comments received from the LWG, as well as the State, Tribes, natural resource agencies, Community Advisory Group, and the Boards in completing the FS.
- EPA sent a letter to the LWG on January 4, 2016 to inform the LWG of EPA's decision to complete the FS.
- The LWG filed an informal dispute disagreeing that EPA could take over the FS and on their inability to file a dispute on the completed FS. The LWG also requested that EPA employ Alternative Dispute Resolution (ADR) to resolve the dispute.
- EPA and the LWG settled this dispute on February 4, 2016, with an agreement that:
  - Both parties mutually agreed EPA could finalize the FS
  - The LWG would withdraw this dispute and its subsequent request for ADR.
  - The LWG would be allowed to dispute the final FS, once issued. Resolution of the dispute will occur during the public comment process. However, to maintain the integrity of the public comment process, EPA will not have separate meetings with the parties on the dispute. EPA's response and resolution to the dispute will be reflected primarily in the responsiveness summary, which is part of the ROD.
  - EPA will not require the LWG to reimburse EPA's costs under the AOC in finalizing the FS. This includes \$2.9M incurred in FY15 and any costs for finalizing the FS during FY16. EPA reserved its rights to seek all costs in future negotiations or litigation.

**Current Status:** Since the issuance of the draft FS in August 2015, EPA developed an optimized alternative which will be presented as the Preferred Alternative in the PP. The optimized alternative was reviewed by the Boards, and will be evaluated in the FS, along with the other alternatives.

- The alternatives originally evaluated in the draft FS individually did not reduce risk consistently throughout the site. The risk reductions were greater in some areas and less in others. Using Alternative E as a baseline, an optimized alternative was developed to meet specific objectives and achieve more uniform risk reduction throughout the site. In some areas those objectives are met with Alternative E, in others they are met with alternatives that rely more on MNR and in some areas with alternatives that rely less on MNR.
- The objectives of the optimized alternative include:
  - Address majority of Principal Threat Waste
  - Meet Preliminary Remediation Goals for ecological receptors as early as possible
  - Minimize Institutional Controls for people eating contaminated fish and shellfish
  - Minimize recontamination from riverbanks
  - Increase fish consumption rates to at least the rates achieved by Alternative E, on a site-wide basis
  - Minimize river use restrictions (use of caps)
  - Achieve acceptable risk ranges for most people using the river at the time construction of the remedy is completed

The optimized alternative includes active remediation (dredging, capping and treatment) to reduce risk to a certain level at the time of construction, followed by monitored natural recovery to allow the river to reach cleanup levels, post construction.

**Current Status:** EPA is conducting an extensive outreach campaign to educate the public and the community prior to release of the FS and PP. EPA is also coordinating with the City of Portland and the State on this outreach effort.

- In addition to our ongoing regular interactions with key stakeholder groups, EPA is reaching out to the broad community as well as a wide range of interest groups, including:
  - Groups representing vulnerable populations
  - Students ranging from elementary school to college classes
  - Youth organizations
  - Local and national non-profit groups
  - Neighborhood associations
  - City, County and State elected officials
  - Business associations
  - The media
- EPA's communication goal prior to issuing the PP is to assure that affected community members and the public are prepared to provide EPA meaningful comments and fully participate in the public process once the PP is issued. EPA is

communicating background information, associated site risks, basis for EPA action, EPA's technical approach and technologies under consideration, remedy selection schedule and how community members can participate.

- EPA plans to meet with the congressional delegation, LWG Executives, MOU Partners (six Federally Recognized Tribes and Natural Resource Trustees) and Community Partners on March 30 and 31, just prior to issuing the PP.

**Current Status: Various groups have conveyed important concerns to EPA**

- Implementability of the remedy: In the interest of more quickly signing Consent Decrees and starting Remedial Design, and in the interest of parties having more certainty that they will be relieved of liability in certain locations in the river, EPA has been asked by the State and some of the other PRPs to consider designating some of the thirteen EPA-defined Sediment Decision Units as Operable Units in the ROD. EPA has been evaluating the site holistically, including developing alternatives that address the whole site, rather than specific areas, and therefore has not divided the site into OUs. We are in active conversations to understand the underlying interests and attempt to resolve both concerns. We can, and most likely will, phase the remedial design and implementation of the remedial action, which will help to address some of these concerns.

**Current Status: Various groups have conveyed important concerns to the EPA**

- Implementability of the remedy: EPA has been asked by the State and a couple PRPs to consider designating Operable Units within the site for the main purpose of dividing the cleanup responsibility into smaller areas. The State and PRPs believe dividing the site into Operable Units will lead to Consent Decrees being signed sooner and starting Remedial Design., EPA has been evaluating the site holistically, including developing alternatives that address the whole site, rather than specific areas, and therefore has not divided the site into OUs. The information on fate and transport also supports that the harm from the releases of hazardous substances to the river is not divisible in large measure and the PRPs are jointly and severally liable to cleanup the entire site. We believe that post-ROD negotiations can lead to agreements for different groups of PRPs performing the cleanup at different areas and there is no need to divide the site into OUs in the Proposed Plan and ROD. We are in active conversations to understand the underlying interests and attempt to provide sufficient information to the State and PRPs about possibilities in post-ROD discussions. We can, and most likely will, phase the remedial design and implementation of the remedial action, which will help to address some of these concerns.
- Protectiveness of the remedy and health of the Columbia River. Some Tribes and the Community Advisory Group are advocating for a remedy that includes removal of the maximum amount of contamination in the river. In order to consider this remedy, we are adding another alternative in the FS that includes active cleanup (dredging and capping) to achieve the cleanup levels at the end of construction, i.e, not rely on MNR to further reduce risks. In addition, in response to a comment from the Boards, we are evaluating the contaminant loading from the site to the Columbia River, and the reduction in contaminant loading to the Columbia expected from the various cleanup alternatives.

- The Tribes are following EPA's work on Portland Harbor very closely and asking detailed technical questions. We plan to conduct another round of consultations with the Tribes during the public comment period. Yakama Nation has indicated they may seek to consult directly with the EPA Administrator. Some Tribes are seeking the highest level of cleanup. Yakama Nation presented EPA with a Tribal Council Resolution demanding that EPA mandate a cleanup within the ROD that is "protective of all Yakama Nation members from the toxics from this site and provides for the safe consumption of fish and traditional use of our Treaty Reserved Resources." The Superfund cleanup will meet CERCLA and NCP requirements, which will reduce risk but will not return the river to pre-Treaty conditions.
- Cost: Individual PRPs have conveyed concerns about their ability to afford the cleanup under the joint and several liability provision. Local elected officials have raised concerns about the trade-offs of spending billions of dollars to clean up the Willamette River versus other important city projects and programs. PRPs have also expressed concern about the uncertainty of the cost estimates contained in the FS. In response, EPA is carefully reviewing assumptions in order to develop the most accurate cost estimates possible to include in the FS. Generally and consistent with EPA policy and guidance, cost estimates developed for FSs and RODs have a margin of error of +50 to -30 percent of the actual costs. The cost estimates are then better defined in the remedial design stage.